***THE HON'BLE MR JUSTICE L.NARASIMHA REDDY**

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WRIT PETITION No: 24646 of 2004

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% 09.03.2005

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Between:

The Journalists Co-operative Housing Society Ltd, Plot No. 127/A, Journalist A Colony, Jubilee Hills,
Hyderabad, Rep. by its Secretary.

... PETITIONER

AND

1 G. Sujatha, D/o Late Venkatadri,
403, Pooroors Coral Apartments, 12-5-5, Vijayapuri,

Taranaka, Hyderabad-17.
2 Deputy Registrar of Co-op Societies (Housing), Hyderabad-3.
3 The A.P. Co-operative Tribunal, Hyderabad, Rep. by its

Secretary.

...RESPONDENTS

! Counsel for the Petitioner:MR.P.GIRISH KUMAR

^ Counsel for the Respondent No.1: Mr.B.Purushothama Reddy Counsel for the Respondent Nos.2&3: GP FOR COOPERATION

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> Head Note:

? CITATIONS:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE NINTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

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Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of mandamus or any other appropriate writ or order or direction holding that the orders of the Co-operative Tribunal in CTA.No. 209 of 1999 dated 29-9-2004 and that of the 2nd respondent dt. 30-7-1999 in ARC No. 92 of 1998 are contrary to law, unjustified and consequently set aside the same by declaring that the 1st

respondent is not eligible for allotment of plot in view of her joining government service.

Counsel for the Petitioner:MR.P.GIRISH KUMAR

Counsel for the Respondent No.1: Mr.B.Purushothama Reddy

Counsel for the Respondent Nos.2&3: GP FOR COOPERATION

The Court at the admission stage made the following :

THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

WRIT PETITION NO.24646 OF 2004

ORDER:

The petitioner-society challenges the order, dated 30-07-1999 passed by the Deputy Registrar of Co-operative Societies, 2nd respondent in ARC No.52 of 1998, affirmed by the A.P. Co-operative Tribunal, 3rd respondent, through its order, dated 29-09-2004 in CTA No.209 of 1999.

2. The petitioner is a society registered under the provisions of the A.P. Co-operative Societies Act (for short 'the Act'). The membership is restricted to journalists and its object is to provide house sites to its members. The 1st respondent was admitted as member of the society in the year 1990. According to her, on the demand made by the petitioner-society, she paid a sum of Rs.5,000/- as tentative advance on 10-05-1994 for allotment of a plot. Complaining that she was not allotted the plot, in spite of requests, she raised a dispute before the 2nd respondent, under Section 61 of the Act, being ARC No.52 of 1998. Through his order dated 30-07-1999, the 2nd respondent directed the petitioner-society to allot a plot to the 1st respondent herein. The petitioner preferred an appeal before the Tribunal in CTA No.209 of 1999. The appeal was rejected.

3. The petitioner-society contends that though the 1st respondent was admitted as a member, she secured employment in Government and thereby incurred disqualification to continue as member or to get a plot allotted. Placing reliance upon

bye-law No.5, it is urged that the 1st respondent cannot be allotted a plot and that the orders passed by respondents 2 and 3 cannot be sustained in law.

4. The 1st respondent, on the other hand, submits that she was admitted as member on 15-11-1990 and paid a sum of Rs.5,000/- as EMD on 09-05-1994. According to her, she did not incur any disqualification and despite the same, the petitioner refused to receive further amounts, though she completed the formalities for allotment of plot.

5. Sri P. Girish Kumar, learned counsel for the petitioner submits that bye-law No.2, of the Bye-laws of the Society, is clear to the effect that it is only when a member continues to be a journalist, that he would be entitled to be extended the benefits of membership, and since the 1st respondent ceased to be the journalist, on joining the Government service, she was not entitled to be extended such benefit. He submits that the respondent Nos. 2 and 3, have placed a wrong interpretation on bye-law 5 and ignored the basic fact that the petitioner ceased to be a journalist.

6. Sri B.Purushothama Reddy, learned counsel for the 1st respondent submits that the allotment of the plot to the 1st respondent was done before she joined the Government service, and thereafter she was addressed letters, requiring her to pay the subsequent installments. He contends that the prohibition contained in bye-law No.5 operates, when a member of the society ceased to be in the profession of journalism. According to him, though the petitioner joined the Government service, she continued to be in the profession of journalism, and that she is the editor of a magazine - Andhra Pradesh, published by the Information and Public Relations Department, Government of A.P. He submits that there was no justification for the petitioner in denying allotment of plot to the 1st respondent.

7. By the time the 1st respondent was admitted as member, no land was available for being allotted. Phase III of the Housing Programme was taken up by the petitioner society in the year 1994, after it was allotted an extent of 60 acres in Gopannapalli village of Ranga Reddy District. It issued a circular dated 14-03-2004, in this regard. The 1st respondent deposited a sum of Rs.5,000/-

on 09-05-1994 towards the E.M.D. Subsequently, the 1st respondent joined the Government service, in December 1994, in the Information and Public Relations Department. According to her, she is continued as a freelance journalist and later

on, became editor of the Andhra Pradesh Magazine. Petitioner addressed a letter dated 14-12-1996, requiring the 1st respondent to pay the third installment. The controversy arose, when she sought to pay an amount of Rs.10,500/- on 15-01-1997. The petitioner refused to receive the amount, on the ground that the 1st respondent incurred disqualification under bye-law 5(2). Aggrieved by the action of the petitioner, the 1st respondent raised a dispute under Section 61 of the Act before the 2nd respondent. An award was passed in her favour on 13-07-1999. The petitioner assailed the same before the Tribunal (3rd respondent). The Tribunal upheld the award of the 2nd respondent through its judgment dated 29-09-2004.

8. The controversy in this writ petition turns around the question as to whether the 1st respondent incurred any disqualification. The petitioner places reliance upon bye-law No.5, in this context. Therefore, it needs to be seen as to whether the 1st respondent had incurred such a disqualification. Apart from prescribing the eligibility, for being admitted as a member, the bye-law, proposes to define the term "journalist" in the context of a membership. The provision reads as under:

> "1. Any person who has attained majority and who is competent to contract and of sound mind and who is not a member of another building society working in the same area shall be eligible for admission as a member. Minors may also be admitted as associate members through their legal guardians. Such Associate members however shall not be eligible to vote, or have share.
>
> 2. A journalist is a person whose avocation is that of a journalist and who is employed as such in or in relation to any newspaper establishment, and includes an editor, a reader-writer news-editor, feature-writer, copy-taster, reporter, correspondent, cartoonist, news-photographer and proof-reader, but does not include any such person who:
>
> i. is employed mainly in managerial capacity performs
>
> ii. being employed in a supervisory capacity, performs either by the nature of duties attached to his office or by the reason of his powers vested in him, functions mainly of a managerial nature.
>
> 3. Provided that any person whose ancestral house is not in Hyderabad and Secunderabad shall be eligible for membership although he is employed or carries on business or profession outside, but only persons who do not own pucca houses shall be admitted as members.
>
> 4. At the time of admission and allotment of shares, plot, site, building, the managing committee shall satisfy itself that the applicant is in the profession of journalism. The

> managing committee shall not however this disposses a member of his residential building when its construction is taken up, completed and occupied, if he for reasons beyond his control leaves the profession of journalism."

9. From a reading of the bye-law, it is evident that mere employment of a person in Government or other service does not bring about any disqualification, either to be admitted as a member, or to be continued as such. The disqualification gets attracted whenever a person is "employed in managerial capacity, and performs such functions or, while acting in supervisory capacity, performs managerial functions". The bye-law does not bring about any distinction between employment in Government and other agencies. The disqualification is more, from the functional aspects, than on the basis of employment. It emerges that an individual cannot be treated as journalist, if he is employed in managerial capacity, or where he discharges managerial functions, even when he was employed in supervisory capacity. The nature of employer become insignificant. Employment *per se*, whether in government, or private organization, does not bring about any disqualification. It is only the nature of functions, that are discharged by such persons, after such employment, that bring about the disqualification.

10. In the instant case, the 1st respondent asserted through out that though she was employed in Government, she continued to be a freelance journalist, for some time, and thereafter became the editor of a magazine published by the Government of A.P. It is not the case of the petitioner that there cannot be any journalists in the Government service. Bye-law 5 does not spell out any such disqualification.

11. Another aspect, which weighed with the respondents 2 and 3 in upholding the claim of the 1st respondent, is that the petitioner did not issue any show cause notice, indicating their intention to disqualify her. Though a letter dated 24-11-1994 was relied upon, it is not in dispute that it was neither served upon the 1st respondent, nor it was acted upon. An endorsement was made on 10-12-1994, to the effect that the amount of Rs.5,000/-, deposited by the 1st respondent was kept in a suspense account. It was only after the

1st respondent approached the 2nd respondent, by initiating proceedings under Section 61 of the Act, that a resolution is said to have been passed by the managing committee of the petitioner, to issue notice to the 1st respondent, for cancellation of

the allotment etc. Inasmuch as the proceedings were already initiated before the 2nd respondent, no further action was taken, in pursuance of the show cause notice issued by the petitioner to the 1st respondent.

12. With the issuance of a letter by the petitioner to the 1st respondent, calling upon her to make the deposit of E.M.D. of Rs.5,000/-, followed by another letter dated 14-12-1996, requiring further deposits, a valid right had accrued to the 1st respondent. The same cannot be taken away, on the basis of unilateral interpretation and actions on the part of the petitioner. Respondents 2 and 3 have discussed the matter at length, with reference to the acts and omissions on the part of the parties, before them, as well as the relevant provisions of law. This Court does not find any error of jurisdiction or material irregularity in the same. Even if a second view is possible on the merits of the matter, it is impermissible to interfere with the orders passed by the respondents 2 and 3, since the High Court does not exercise the appellate jurisdiction over such orders. Hence, the writ petition is dismissed. There shall be no order as to costs.

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L. NARASIMHA REDDY, J.

Dt.09–03—2005.

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Note:

L.R. copy to be marked.

KO/NN

(One fair copy to the Hon'ble Sri Justice L.Narasimha Reddy,

for his Lordship's kind perusal)

To

1 Deputy Registrar of Co-op Societies (Housing), Hyderabad-3.
2 The Secretary, The A.P. Co-operative Tribunal, Hyderabad.

3 Two C.Cs to the Govt. Pleader for Cooperation,

High Court buildings, Hyderabad (OUT)

4 The Under Secretary, Ministry of Law, Justice and Company

Affairs, Union of India, New Delhi.

5 The Secretary, A.P.Advocates' Association, Library,

High Court buildings, Hyderabad.

6 8 LR copies.

7 Two C.D. copies.